

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

SYNMAT, SYNTHETIC MATERIALS

Employer

and

Case No. 26-RC-8170

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 429, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act².
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act³:

INCLUDED: All operators, dock workers and maintenance workers.

EXCLUDED: All managers, supervisors, office clerical, and guards as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced

more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by AFSCME Local 1733.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and address of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627 on or before **May 12, 2000**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street,

N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 19, 2000**.

DATED, at Memphis, Tennessee, this 5th day of May 2000.

/S/

Thomas H. Smith, Acting Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
(Telephone: 901-544-0018/0019)

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¹ The Petitioner and Employer filed briefs which have been duly considered.

² The parties stipulated that Synmat, Synthetic Materials, hereinafter referred to as Employer, is a partnership with an office and place of business in Cumberland City, Tennessee, where it is engaged in the manufacture of gypsum. During the past twelve months, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Tennessee. During the same time period, the Employer sold and shipped goods and products valued in excess of \$50,000 directly to points located outside the state of Tennessee.

³ The Petitioner's petition for election requested a unit consisting of "all operations, maintenance and working leads." The record indicates that the Employer employs two lead operators, seven operators and assistant operators, two dock workers and one maintenance employee. While the petition does not specifically request inclusion of dock workers in the unit, and no stipulation to include them in the unit was made at the hearing, the dock workers were listed as employees on a list of employees and supervisors submitted by the Employer to the Board and Petitioner. Further, as the dock workers perform work at the same facility as the operators and the maintenance worker, perform work related to that performed by the operators and maintenance workers, and, at times, fill in for operators or assistant operators as needed, I determine that the dock workers share a sufficient community of interest with the other employees in the unit to warrant in in the unit found appropriate herein.

The Employer maintains that the two lead operators are supervisors under Section 2(11) of the Act. The individuals in question are Eric Ray Milliken and Christopher Brent Link. Both Milliken and Link report directly to John R. Glasscock, manager of operations at the Employer's facility. The Employer's operations consist of the gypsum production facility and a loading dock used to load gypsum product onto barges for shipping. The production building is a pre-engineered building containing production equipment. The Employer's offices are solely contained in a construction trailer separate from the production building. The trailer contains three offices which are used by an office manager, a secretary and Bill Stotts, the Plant Engineer (who the parties stipulated was a

professional employee within the meaning of Section 2(12) of the Act). Glasscock shares office space with the office manager. The Employer also maintains another construction trailer used for employee breaks. The dock facility is separate from the production building. Terry Norfleet is in charge of the dock operations (the parties stipulated Norfleet is a supervisor within the meaning of Section 2(11) of the Act).

The Employer's facility is used as a synthetic gypsum dewatering plant. Specifically, the Employer uses the facility to generate synthetic gypsum derived from the calcium sulfate waste created by a nearby Tennessee Valley Authority plant. The synthetic gypsum is then sold either to Standard Gypsum, a separate employer which has opened a wallboard factory next to the Employer's facility or is loaded onto barges for shipping to other customers or to be used at different locations. The operators and assistant operators operate the equipment used in the production of the synthetic gypsum. The maintenance employee keeps the equipment in the plant in proper working order. The dock workers operate the equipment used to load the gypsum onto barges. The facility currently operates twenty-four hours per day, seven days each week (except for the dock which only operates from 6:00 a.m. until the work is completed and does not generally operate on weekends). The plant employees, except for dock workers and the maintenance employee, work twelve-hour shifts which start at 6:00 a.m. and 6:00 p.m. The lead operators, operators and assistant operators are divided into four different two-person shifts. According to the management structure implemented by Glasscock around February 1, 2000, each lead operator is responsible for two of the four shifts. The lead operator works only one of the two twelve-hour shifts and must be available for questions or problems during the other twelve-hour shift which he oversees. The shifts work alternate days such that a different lead operator will supervise the following day. Further, the shifts are regularly rotated so that no operator or assistant operator regularly works the day or night shift.

Around the beginning of 2000, Glasscock had discussions with Link and Milliken about them becoming lead operators and assuming supervisory responsibilities. At this same time, Glasscock increased the rate of pay for Link and Milliken from \$12.25 per hour to \$13.50 per hour. Then, on February 1, 2000, Glasscock issued a memo to all employees which announced that Link and Milliken were being named as lead operators at the plant. By this memo and a formal job description, entered into evidence by the Employer, and testimony regarding meetings held with Link and Milliken, the Employer presented evidence that the job duties and responsibilities of Milliken and Link were expanded. The job responsibilities, as set out in the job description, are direct supervision of operators and assistant operators on day shifts; responsibility for production scheduling; responsibility for production reporting; responsibility for maintaining orderliness of plant; responsibility for developing operating procedures and training other operators; responsibility for completion of maintenance work items; and responsibility for insuring plant safety.

Glasscock testified that the reason for naming Milliken and Link as lead operators was because he was not able to spend much time at the facility due to the demands of his position with the Employer. While Glasscock was the supervisor on site prior to February 1, 2000, when he was spending about ninety percent of his time at the Employer's facility, Glasscock testified that he was only spending about ten percent of his time at the Employer's facility after February 1, 2000. Glasscock testified that he needed individuals to supervise the production operations in his absence. Further, Norfleet only oversaw the dock operations and Stotts was solely in charge of maintenance. At the start of January 2000, the facility was operating twenty-four hours per day, with employees working twelve-hour shifts. Glasscock testified that Milliken and Link are responsible for on-site supervision over the day shift and are required to be on-call for the night shift for any questions or problems which may arise when Milliken and Link are not at the facility.

Witnesses for both the Employer and the Petitioner testified that the lead operators, as the direct supervisors, are solely responsible for the operation of the plant during the shifts they operate. The lead operator is responsible for determining production requirements for the shift; running the plant in a safe and efficient manner, including shutting down production if needed; ordering and maintaining an inventory of production supplies; assigning work to employees on the shifts which the lead operator supervises, including making written work assignments in an Employer-maintained log book for employees who work on the shifts not manned by a lead operator; insuring that the plant is fully staffed during their shifts, including assigning overtime or approving shift transfer and vacation requests; and training employees in the plant. Glasscock further testified that the lead operators have been given the power to effectively recommend the hiring, promotion, discipline or termination of employees.

The witnesses at the hearing for both the Employer and the Petitioner agree that lead operators are paid a higher rate of pay per hour (\$13.50) than operators (\$12.25) or assistant operators (\$11.50). Further, as noted above, the lead operators are required to be available outside their regular work schedule to discuss problems or questions with the operators who are working the other shifts. These witnesses agree that lead operators are contacted on a routine basis regarding problems or issues at the plant.

The witnesses testified that, at the plant, the operators are not directly supervised by Stotts or Norfleet. These witnesses further testified Glasscock has spent little time at the facility since February 2000 and does not monitor the daily operations at the plant. Therefore, if the lead operators are not supervisors, then there would, in effect, never be direct on-site supervision of the operators. Milliken and Link testified that they oversee production on their shifts.

Link further testified that, because of the numbers of employees available for work at the plant, overtime is required to be granted any time an employee misses work. However, this testimony is contradicted by the testimony that the lead operator alone has discretion in choosing which employee will be offered the overtime shift or whether to work the overtime shift himself.

In view of the foregoing and the record as a whole, I find that the two lead operators, Link and Milliken, possess supervisory indicia and are supervisors within the meaning of Section 2(11) of the Act. The lead operators direct and assign work to the operators, approve schedule changes, assign and approve overtime and approve vacations. Allen Services Co., Inc & Peatross Service Co., Inc., 314 NLRB 1060, (1994); Trans World Airlines, 211 NLRB 733 (1974); Custom Bronze & Aluminum Corp., 197 NLRB 397 (1972). Further, given the newness of their positions, while the record does not demonstrate to any significant degree that the lead operators have exercised the power effectively to recommend hiring, termination, discipline or reward of employees, the testimony of Glasscock is clear they have been granted such authority. Elliott-Williams Co., 143 NLRB 811 (1963). The lead operators receive a higher rate of pay than the operators and assistant operators and are required to be available outside of their regular work hours for the problems and questions of operators at the plant. Illini Steel Fabricators, 197 NLRB 303 (1972). Lead operators provide the only on-site supervision of the operators and assistant operators. Pennsylvania Truck Lines, 199 NLRB 641 (1972). While the Petitioner contends that the team leaders spend a substantial amount of their time in work identical to that of the operators and assistant operators, this evidence is not dispositive in light of the whole record. Rose Metal Products, Inc., 289 NLRB 1153 (1988).

There are approximately ten employees in the unit found appropriate herein.

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